

**CITY OF NEWPORT BEACH
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, SEPTEMBER 19, 2013
REGULAR MEETING – 6:30 p.m.**

**BRADLEY HILLGREN
Chair**

**LARRY TUCKER
Vice Chair**

**KORY KRAMER
Secretary**

FRED AMERI

TIM BROWN

RAYMOND LAWLER

JAY MYERS

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

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I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF SEPTEMBER 5, 2013

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

ITEM NO. 2 216 CRYSTAL VARIANCE (PA2013-118)

Site Location: 216 Crystal Avenue

Summary:

A request for a variance to allow the following improvements to an existing nonconforming duplex: 1) a second story addition which would exceed the maximum allowed floor area; 2) an addition greater than 10 percent of the existing square footage without providing the required number of parking spaces (two garage spaces per unit); and 3) encroachment into the 4-foot side yard setback along E. Bay Front Alley.

CEQA Compliance:

The project categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities) of the implementing Guidelines of the California Environmental Quality Act as the project is an addition to an existing structure and is located on a developed site with no environmentally significant resources present.

Recommended Action:

1. Conduct a public hearing; and
2. Adopt Resolution No. ____ approving Variance No. VA2013-005.

VIII. STUDY SESSION

ITEM NO. 3 WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE (PA2012-057)

Site Location: City-wide

Summary:

An amendment to the Newport Beach Municipal Code ("NBMC") to update regulations regarding wireless telecommunication facilities ("Telecom Facilities"). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

Recommended Action:

1. Review and comment on the proposed draft ordinance.

IX. OTHER BUSINESS

ITEM NO. 4 LAND USE ELEMENT AMENDMENT (PA2013-098)

Site Location: City-wide

Summary:

Review of land use amendments as recommended by the Land Use Element Amendment Advisory Committee. These recommended amendments will be included in the project description for the draft environmental impact report. Formal Planning Commission public hearings on the proposed amendments are anticipated to occur in the spring of 2014.

Recommended Action:

1. Review and comment on the potential land use changes.

X. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

ITEM NO. 6 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

XI. ADJOURNMENT

Sept. 19, 2013 Planning Commission Agenda Comments

Comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229). ~~strikeout~~ underline format is used to suggest changes to the passages quoted in *italics*

Item No. 1 Minutes of September 5, 2013

1. Page 1:

- a. Last paragraph: *"Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0), to approve the Minutes of the Planning Commission meeting of August 22, 2013, as corrected~~, as file.~~"*

2. Page 2:

- a. Line 1 of first motion: *"... to adopt Resolution No. ~~(INSERT RESO NUMBER) ???,~~ ..."* [note: based on the resolution number identified in the minutes for Item 5 (Woody's Wharf), the present resolution number is probably **1920**, and the resolution for Item 3 (Lido Villas) – which is also not identified -- was probably No. 1921]
- b. Line 5 of amended motion: *"... related to the choice of design concepts as **original** originally proposed including ..."*

3. Page 3:

- a. Paragraph 2 from end: *"Steve Mills, **Dart DART** Development, the applicant, thanked the Commission ..."*

4. Page 4:

- a. Paragraph 8: *"... the project will be subject to all of the ~~Cal-Green~~ CALGreen regulations ..."*

5. Page 7:

- a. Paragraph 4: *"Steve Mills, **Dart DART** Development, wondered if ..."*
- b. Paragraph 9, line 2: *"... and suggested stepping the **side site** slightly ..."* [?]
- c. Paragraph 10, line 2: *"Discussion followed regarding **minimizing restricting** allowable uses to "condominium and recreational"."*
- d. Page 8, paragraph 3: *"**Jeremy Jeramey** Harding, **GMB T&B** Planning, City Environmental Consultant, stated that ..."*

6. Page 10:

- a. Paragraph 12: *"~~Outside Counsel~~ Deputy City Attorney Kyle Rowen noted that ..."* [note: the term "Outside Counsel" may have been used at the hearing, but it gives the incorrect impression that Kyle is not connected with the City or the applicant]
- b. Last paragraph: *"... when the Planning Commission originally considered the Use Permit in November 2012, **the it** denied patron dancing on the basis that ..."*

7. Page 12:

- a. Paragraph 2 under Item 7: "*Vice Chair Tucker addressed items for discussion on the General Plan/Local Coastal Program Implementation Land Use Element Amendment Advisory Committee's upcoming agenda.*" [note: the audio indicates Vice Chair Tucker was responding to a question from the Chair regarding LUEAAC, and addressed the CEQA-required SEIR. GP/LCP is a different committee.]

Item No. 2 216 Crystal Variance (PA2013-118)

Regarding the draft Resolution of Approval (Attachment PC 1):

1. Section 1.1: "... and legally described as Lot 9, Block 5 requesting ..." [note: Sometimes further information is supplied identifying the map on which this is the description. In the present case, I believe the map being referred to is Balboa Island Section 5.]
2. Section 3:
 - a. A.5: "*The irregularly shaped buildable area **and** prohibits the ability to create additional parking without eliminating the habitable area of the first floor unit.*"
 - b. B.3: "*The existing duplex was permitted in 1951 to provide **a** 1-car garage per unit, per the Zoning Code in **affect effect** at that time.*"
 - c. C.1: "*The unusually large setback area and unusual triangular shape is not typical of other lots within the block or on Balboa Island and significantly limits the floor area and buildable area.*" [note: the City GIS map suggests there are about six triangular lots on Little Balboa Island and a similar number at the west end of the main island. If the desire is that these can all be developed to a FAR of 1.0, should the Zoning Code not be modified to say that?]
 - d. C.3: "*The proposed encroachment into the side yard setback, consistent with the existing structure, is reasonable in this case due to the unusual triangular shape that limits the buildable area.*" [I believe this is referring to the encroachment of the second floor into the alley. It needs, perhaps, to be balanced against the fact that on the ground floor this structure needs to be set back only 4 feet along the bulk of its alley frontage (because the alley is regarded as a "side" setback) compared to the 5 feet (?) required for the other lots along the alley.]
 - e. D.2: "*The proposed side yard setback along E. Bay Front Alley of 2 feet 6 inches is consistent with the existing structure **and** does not result in a special privilege because ...*"
3. Conditions of Approval (Exhibit "A"):
 - a. Condition 2: "*The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.*" [At the August 29, 2013, Zoning Administrator hearing, a resolution for approval omitted this standard condition, supposedly because the City Attorney had determined it (and similar statements reminding the applicant of the continuing applicability of state and other laws, as in Condition 5) to be superfluous, and recommended its removal. Since later resolutions have included it, again, it is unclear what the City's policy is.]

- b. Condition 12: "... to City's approval of the 216 Crystal Avenue Variance including, but not limited to, the Variance No. VA2013-005 (PA2013-118)."
- c. Condition 15: What does "...and to include **sound rating**" mean?
- d. Condition 17: "*The development site is subject to liquefaction zone policy and flood Zone; therefore, the structure shall comply with liquefaction and FEMA guideline policy.*" Does this mean the proposed construction will trigger the need to raise the foundation? If so, wouldn't the plans be completely different?

Regarding the draft Resolution for Denial (Attachment PC 2):

- 1. Section 2: I believe a CEQA determination is not required when an application is being denied (to quote from earlier resolutions of denial: "*Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.*")
- 2. Section 4(?): The proposed resolution appears to be missing the Decision and signature sections.